

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMERICAN NATIONAL MANUFACTURING INC.,  
Petitioner,

v.

SELECT COMFORT CORPORATION,  
Patent Owner.

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Case No. IPR2019-00514  
Patent No. 5,904,172

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**DECLARATION OF CARL G. DEGEN  
IN SUPPORT OF PATENT OWNER'S RESPONSE**

I, Carl G. Degen, declare as follows:

1. I am over the age of 21 years and am fully competent to make this Declaration. I make the following statements based on personal knowledge and, if called to testify to them, could and would do so.

2. I received my Bachelor's of Science Degree in Mathematics and Economics from the University of Wisconsin–Parkside in Kenosha, Wisconsin in 1977. I then completed all but my dissertation toward a Ph.D. in Economics at the University of Wisconsin–Madison in 1980.

3. I am currently employed at Laurits R. Christensen Associates, Inc. in Madison, Wisconsin, where I have worked since 1980. I started my employment as an Economist in 1980, and advanced numerous times to my current role as President, which I have held since 2005. I was previously an Economics Teaching Assistant from 1977 to 1978 and an Economics Research Assistant from 1978 to 1980 at the University of Wisconsin–Madison. I was also the Vice President of the Wisconsin Business Economics Association from 1983 to 1984.

4. I have testified in numerous litigations involving intellectual property and other business disputes, and in postal and energy rate cases. Since joining Laurits R. Christensen Associates, Inc., I have worked extensively on projects for the U.S. Postal Service including productivity measurement, cost measurement, product cost

models, and regulatory reform. I have also worked on projects in the energy and railroad industries. I have authored papers and written regulatory testimony.

5. A copy of my current CV is attached as Appendix A.

6. I have been retained by Fox Rothschild LLP, counsel for Sleep Number Corporation, formerly known as Select Comfort Corporation (“Sleep Number”), to analyze certain unit sales data produced in this *inter partes* review (“IPR”) proceeding by Petitioner American National Manufacturing, Inc. (“ANM”). None of my opinions are contingent on any result or payment of my fees.

### **Understanding of the Law**

7. I am not a lawyer and do not offer legal opinions. However, I do have an understanding of certain legal concepts as relevant to my work and my analysis in this case.

8. I understand that there are various secondary indicia of non-obviousness (sometimes called “secondary considerations”) that a patent owner may argue support a finding of patentability. I understand one such secondary consideration is commercial success, which I understand to relate to economic considerations regarding the products at issue. I understand one relevant consideration of commercial success is demand for the patented technologies, which can relate to the amount of sales of products that include the patented technologies, the sales trends of these products, and the market’s purchasing behavior regarding

these products. I understand another relevant consideration of commercial success is adoption of the patented technologies, which I understand to relate to the extent to which patented technologies displace non-patented technologies in relevant segments of the market.

9. My opinions and analyses are based on the data and evidence currently available. If additional evidence or clarifying information is provided, I reserve the right to consider its impact, if any, on my opinions and analyses and amend this declaration if appropriate.

### **Background**

10. I have reviewed Sleep Number's Amended Disclosure of Asserted Claims and Infringement Contentions against ANM, which is Exhibit 2070. I understand that these exhibits disclose ANM's air bed systems, including names of air controllers that Sleep Number has accused in an underlying district court case.

11. It is my understanding that ANM petitioned the United States Patent and Trademark Office for IPR on three Sleep Number Patents: U.S. Patent No. 5,904,172 ("the '172 Patent"); U.S. Patent No. 9,737,154 ("the '154 Patent"); and U.S. Patent No. 8,769,747 ("the '747 Patent"); and that IPR has been instituted on each Patent. I understand that infringement is not an issue in this IPR, but I use the term "accused" throughout this declaration for ease of reference and because that is the term ANM used in its production of its unit sales data discussed below.

12. I have reviewed a document produced by ANM in the underlying district court case with the bates number ANMI00133414–22, which I understand is Exhibit 2077. I understand that Exhibit 2077 includes the names of air controllers ANM sold between the years 1998 and 2018 and includes a timeline at ANMI00133414 depicting when ANM sold each air controller. My analysis focuses on what ANM refers to as the Gen 2 V4, Gen 3 V1, and Gen 3 V2 air controllers. I understand that the timeline and the subsequent pages provide information regarding the “Manifold” and “Software” (ANM’s terms used in Exhibit 2077) included in these air controllers. This is relevant to my analysis as explained below.

13. Exhibit 2077 (at ANMI00133414 and ANMI00133420) shows that ANM sold the Gen 2 V4 air controller (which included an “Arco/Rimco” manifold and “Arco, Target system”<sup>1</sup> Software) from August 2012 through approximately December 2014. Exhibit 2077 (at ANMI00133414 and ANMI00133421) shows that ANM sold the Gen 3 V1 air controller (which included an “Arco/Rimco” manifold,

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<sup>1</sup> Exhibit 2077 at ANMI00133420 indicates that ANM’s Gen 2 V4 air controller is the earliest air controller that ANM described as a “target pressure” controller.

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